



**CITY OF LODI
COUNCIL COMMUNICATION**

AGENDA TITLE: Consent to Continued Representation of City of Lodi and Northern California Power Agency – CT1 Project Sale from Lodi to Roseville.

MEETING DATE: July 18, 2007 City Council Meeting

PREPARED BY: City Attorney's Office

RECOMMENDED ACTION: That the City Council grant their consent to the continued representation of the City of Lodi and Northern California Power Agency by Meyers Nave for the CT1 Project Sale from Lodi to Roseville.

BACKGROUND INFORMATION: Meyers Nave is General Counsel to the Northern California Power Agency. They also represent the City of Lodi on a continuing basis in connection with Land Use and Development issues. Lodi is currently attempting to sell its interest in the CT1 Project to Roseville and Meyers Nave will represent NCPA in a position that by definition is opposed to Lodi. Because Meyers Nave's involvement in NCPA is completely unrelated to the other work performed on behalf of the City of Lodi, I see no potential for actual conflict and recommend Council grant me the authority to execute the attached Conflict Waiver.

Approved:

Stephen Schwabauer
City Attorney

FISCAL IMPACT: N/A

FUNDING AVAILABLE: N/A

APPROVED: _____
Blair King, City Manager

June 8, 2007

JUN 13 2007

CITY ATTORNEY'S OFFICE

D. Stephen Steve Schwabauer, City Attorney of Lodi
Office of the City Attorney
P.O. Box 3006
Lodi, CA 95241-1910

**RE: Consent to Continued Representation of City of Lodi and Northern California Power Agency
– CT1 Project Sale from Lodi to Roseville**

Dear Steve,

As you are aware, we act as the General Counsel to the Northern California Power Agency. In that capacity we have been asked by NCPA to provide advice to it regarding the potential sale or transfer of the interests in the NCPA CT1 Project that is owned by the City of Lodi to the City of Roseville. The City of Lodi, of course, is also a client of our firm, albeit in matters unrelated to the CT1 Project. In advising NCPA regarding this sale, there may be matters which create either actual or potential conflicts of interest between the interests of NCPA and those of Lodi, and the interests and objectives of NCPA and Lodi relating to the CT1 Project sale either are or may become inconsistent with each other. The purpose of this letter is to disclose this relationship and situation to you, and to seek the City's informed, written consent to our continued representation of NCPA with respect to the CT1 Project Sale as well as our continued representation of Lodi in the land use and CEQA matters for which we have been retained.

As attorneys, we are governed by specific rules relating to our representation of clients when present or potential conflicts of interest exist. Rule 3-310(B) of the California Rules of Professional Conduct provides in part:

"A member [attorney] shall not accept or continue representation of a client without providing written disclosure to the client where:

(1) The member has a legal, business, financial, professional, or personal relationship with a party or witness in the same matter...."

Rule 3-310(C) of the Rules provides in part:

"A member shall not, without the informed written consent of each client: ...

(3) Represent a client in a matter and at the same time in a separate matter accept as a client a person or entity whose interest in the first matter is adverse to the client in the first matter."

At the present time, we believe we can competently represent both NCPA and Lodi. The matter in which we currently provide advice to Lodi relates to certain land use, CEQA and development issues, including those where PG&E claims a right to serve electricity in newly developing or newly annexed areas of the City. Lodi's interests in that matter are aligned with those of NCPA which also believes that publicly owned utilities should be able to annex territory and provide electric service to that territory. As you are aware, these matters are mostly complete. We do not represent Lodi in any matter in which the proposed CT1 Project Sale is either directly or indirectly involved.

Lodi remains free, of course, to seek independent counsel with respect to this matter. If you have any questions about this letter, you should discuss them with independent counsel before signing the consent below. If Lodi consents to Meyers Nave continuing to represent it in the land use and CEQA matters, while simultaneously representing NCPA in the CT1 Project matter, please sign where indicated below and return the signed copy of this letter to my attention.

If you have any other questions, please call me at your convenience. We look forward to representing Lodi in the future.

Very truly yours,

MEYERS, NAVE, RIBACK, SILVER & WILSON



Steve Mattas

CONSENT TO CONTINUED REPRESENTATION:

On behalf of the City of Lodi, I consent to Meyers Nave continuing to represent the City of Lodi in matters not directly related to the proposed CT1 Project Sale from City of Lodi to the City of Roseville, while simultaneously representing NCPA in the CT1 Project Sale.

D. Stephen Schwabauer, City Attorney

cc. Benjamin T. Reyes, Esq.
Michael F. Dean, Esq.
Lorri Fien, Conflicts/Calendaring Manager

Proposed Amendment to the Northern California Power Agency Joint Powers Agreement
(Revised April 1, 1973)

Existing text:

Article III Powers and Functions

Section 2.

The manner in which the NCPA, the administering agency, shall exercise its powers and perform its duties is and shall be subject to the restrictions upon the manner in which a general law city which is a member hereof could be subject to any restrictions applicable to the manner in which any other public agency could exercise such powers or perform such duties, whether such agency is a party to this Agreement or not.

Proposed Amendment

Article III Powers and Functions

Section 2.

The manner in which the NCPA, the administering agency, shall exercise its powers and perform its duties is and shall be subject to the restrictions upon the manner in which a general law city which is a member hereof could be subject to any restrictions applicable to the manner in which any other public agency could exercise such powers or perform such duties, whether such agency is a party to this Agreement or not. Except that NCPA's Commission may adopt, by resolution, rules for the construction of public works projects for the generation and transmission of electric power and energy that allow such works to be contracted to the lowest responsible bidder where the expenditure exceeds two hundred fifty thousand dollars (\$250,000).